IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 21200 of 2005

Dated: 28th September 2005.

Between:

M/s. NCL Alltek & Seccolor Limited .. Petitioner

AND

The Commercial Tax Officer,

Nampally Circle, Hyderabad and

two others .. Respondents

ORDER : (per JC,J)

The petitioner is a private limited company and an assessee on the rolls of the 1st respondent under Andhra Pradesh General Sales Tax Act, 1957. The petitioner is engaged in the business of sale of pre-recorded audio cassettes. The 1st respondent passed an assessment order dated 31.3.2004 with reference to assessment year 2000-2001 determining a net turnover of Rs.2,27,39,283/-.

Subsequently, the 2nd respondent issued a show-cause notice dated 18.1.2005 proposing to levy tax @ 12% on the cassettes covering turnover of Rs.2,25,58,159/- and Rs.96,050/- relating to audio mastering tapes. The petitioner filed its objections claiming that the goods are liable to tax only at 4% under notification in G.O. 252, dated 19.5.1995. However, the 2nd respondent rejected the objections of the petitioner and confirmed the levy at 12% by his order dated 29.3.2005 and passed a consequential order dated 30.3.2005 revising the assessment.

Aggrieved by the same, the petitioner preferred an appeal before the Sales Tax Appellate Tribunal in T.A.No.684 of 2005 and along with the appeal, the petitioner preferred an application seeking stay of the recovery of the tax in dispute which application was rejected by the 3rd respondent by an order dated 9.9.2005 and hence the present writ petition with the prayer as follows :

"It is prayed that the Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction quashing the order of the 3rd respondent in CCT's Ref. No.LIII(2)/738/05, dated 9.9.2005 refusing to grant stay of collection of the balance disputed tax of Rs.9,07,938/- for the assessment year 2000-01 as arbitrary and unjustified and consequently restrain the 1st respondent from taking any coercive steps for recovery of disputed tax pending disposal of the appeal in T.A.No.684 of 2005 before the Sales Tax Appellate Tribunal."

Heard the learned counsel for the petitioner and the learned Government Pleader.

Admittedly, the Tribunal has already taken a view in another case that the pre-recorded cassettes are also covered by the exemption notification referred to earlier and we are informed the department challenged the correctness of the decision of the Tribunal before this Court and the matter is pending.

In the circumstances, we are of the opinion that the writ petition can be disposed of at this stage staying the collection of the tax pursuant to the revisionary order dated 30.3.2005, pending a final order by the Tribunal in the above mentioned appeal on condition

the petitioner deposits 50% of the tax demanded pursuant to an order dated 30.3.2005 within a period of four weeks from today.

The Writ Petition is accordingly disposed of with the above direction. No costs.

J.CHELAMESWAR,J

M.VENKATESWARA REDDY,J

knk

Dt : 28.9.2005